



# PUBLIC NOTICE

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**DA 01-746**  
**March 26, 2001**

## **VHF PUBLIC COAST AND LOCATION AND MONITORING SERVICE SPECTRUM AUCTION SCHEDULED FOR JUNE 6, 2001**

**Notice and Filing Requirements for 16 Licenses in the VHF Public Coast and  
241 Licenses in the Location and Monitoring Service Auction**

### **Minimum Opening Bids, Upfront Payments and Other Procedural Issues**

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## **I. GENERAL INFORMATION**

### **A. Introduction**

By this public notice, the Wireless Telecommunications Bureau (“Bureau”) announces the procedures and minimum opening bids for the upcoming auction of VHF Public Coast and Location and Monitoring Service (“LMS”) spectrum (Auction No. 39) scheduled for June 6, 2001. On February 23, 2001, in accordance with the Balanced Budget Act of 1997,<sup>1</sup> the Bureau released a Public Notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 39.<sup>2</sup> The Bureau received one comment and one reply comment in response to the *Auction No. 39 Comment Public Notice*.<sup>3</sup>

### **1. Background of Proceeding**

Auction No. 39 will be the second auction each for VHF Public Coast and LMS spectrum. The initial VHF Public Coast licenses were awarded in Auction No. 20, which ended on December 14, 1998. The initial LMS licenses were awarded in Auction No. 21, which ended on March 5, 1999.

#### **a. VHF Public Coast**

In July 1998, the Commission restructured the licensing framework that governs VHF Public Coast stations.<sup>4</sup> Pursuant to the *Public Coast Third Report and Order*, site-specific licensing has been replaced with a geographic-based system. This geographic-based licensing methodology is similar to that used in other commercial mobile radio services (“CMRS”). The geographic areas for the inland VPC licenses were based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce. Service and operational requirements for VHF Public Coast Stations are contained in Part 80 of the Commission’s Rules.<sup>5</sup>

#### **b. LMS**

In 1995, the Commission established rules governing the licensing of the LMS in the 902-928 MHz

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<sup>1</sup> Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3002(a) (codified at 47 U.S.C. § 309(j)(4)(F) (1997)) (“Balanced Budget Act”). The Commission’s authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

<sup>2</sup> See “Auction of Licenses for the VHF Public Coast and Location and Monitoring Services Spectrum Scheduled for June 6, 2001; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues,” *Public Notice*, DA 01-477 (rel. February 23, 2001), 66 Fed. Reg. 13531 (March 6, 2001) (“Auction No. 39 Public Notice”).

<sup>3</sup> Comments were filed by Warren C. Havens (“Havens”). Reply Comments were filed by Progeny LMS, LLC (“Progeny”).

<sup>4</sup> See Amendment of the Commission’s Rules Concerning Maritime Services, PR Docket No. 92-257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998), 63 Fed. Reg. 40059 (July 27, 1998) (“Public Coast Third Report and Order”).

<sup>5</sup> See 47 C.F.R. Part 80.

frequency band.<sup>6</sup> LMS refers to advanced radio technologies designed to support the nation's transportation infrastructure and to facilitate the growth of Intelligent Transportation Systems.<sup>7</sup> The Commission created a new Subpart M in Part 90 of the Commission's Rules for Transportation Infrastructure Radio Services, which includes LMS and like services.

Multilateration LMS systems are designed to locate vehicles or other objects by measuring the difference in time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit to be located. Such systems generally use spread-spectrum technology to locate vehicles throughout a wide geographic area. Multilateration technology is used, for example, by trucking companies to track individual vehicles, by municipalities to pinpoint the location of their buses, and by private entrepreneurs developing subscriber-based services for recovery of stolen vehicles.<sup>8</sup> The Commission defined non-multilateration systems as LMS systems that employ any technology other than multilateration technology. The Commission noted that unlike a multilateration system, which determines the location of a vehicle or object over a wide area, a typical non-multilateration system uses narrowband technology whereby an electronic device placed in a vehicle transfers information to and from that vehicle when the vehicle passes near one of the system's stations.

## **2. Licenses to Be Auctioned**

The licenses available in this auction consist of the following licenses that remained unsold in Auctions Nos. 20 and No. 21.

### **a. VHF Public Coast Licenses**

Sixteen licenses will be available in geographic areas known as VHF Public Coast Areas (VPCs). There are two categories of VPCs: maritime VPCs and inland VPCs. All of the VHF Public Coast licenses to be offered in Auction No. 39 are inland VPC licenses. Inland VPCs are identical to the Commerce Department's Economic Areas<sup>9</sup>, no part of which is within 100 miles of a major waterway. Each VPC license has seven 25 kHz channel pairs, adding up to 350 kHz.

<u>Inland VPCs:</u>	<u>Channel Pairs (total kHz available)</u>
Inland Border VPCs:	24, 26, 27, 28, 85, 86, 87 (350 kHz)

<sup>6</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Report and Order*, PR Docket No. 93-61, 10 FCC Rcd 4695 (1995) ("LMS Report and Order").

<sup>7</sup> The term "Intelligent Transportation System," or "Intelligent Vehicle Highway System," refers to the collection of advanced radio technologies that, among other things, is intended to improve the efficiency and safety of our nation's highways. *LMS Report and Order* at 4698, ¶ 5 n.9.

<sup>8</sup> *LMS Report and Order*, 10 FCC Rcd at 4697-98, 4703, ¶ 14.

<sup>9</sup> The Bureau of Economic Analysis of the Department of Commerce has divided the U.S. into 172 Economic Areas ("EAs"), effective April 10, 1995, to facilitate regional economic analysis. Each EA consists of one or more economic nodes – metropolitan areas or similar areas that serve as centers of economic activity – and the surrounding counties that are economically related to the nodes. Final Redefinition of the BEA Economic Areas, Department of Commerce, Docket No. 950-3020-64-5064-01, 60 Fed. Reg. 13114 (Mar. 10, 1995).

VPCs 10, 11

Inland Non-Border VPCs:

VPCs 12-15, 23, 26, 38	24, 26, 27, 28, 85, 86, 87 (350 kHz)
VPCs 16, 18, 19, 20, 21, 22, 40	24, 26, 27, 28, 84, 86, 87 (350 kHz)

### **b. LMS Licenses**

Three blocks of spectrum are allocated for LMS systems:

(1) Block A	904.000 – 909.750 MHz and 927.750 – 928.000 MHz
(2) Block B	919.750 – 921.750 MHz and 927.500 – 927.750 MHz
(3) Block C	921.750 – 927.250 MHz and 927.250 – 927.500 MHz

A geographic licensing area is comprised of each of these spectrum blocks. LMS spectrum is licensed in 176 Economic Areas (EAs). In Auction No. 39, 241 LMS licenses will be available: 117 licenses will be auctioned in Block A, 61 licenses will be auctioned in Block B, and 63 licenses will be auctioned in Block C.

A list of licenses available in Auction No. 39 is included in Attachment A.

## **B. Rules and Disclaimers**

### **1. Relevant Authority**

#### **a. VHF Public Coast**

Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the VHF Public Coast Service, contained in Title 47, Part 80 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations.

Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 39 Comment Public Notice*; the *Public Coast Third Report and Order*; and in Sections I and III of Amendment of Part 80 of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, PR Docket No. 92-257, RM-7956, 8031, 8352, FCC 97-217, 12 FCC Rcd 16949 (1997) ("Public Coast Second Report and Order"); and Part 1, Subpart Q, of the Commission's Rules concerning competitive bidding proceedings.

#### **b. LMS**

Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Location and Monitoring Service, contained in Title 47, Part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations.

Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 39 Comment Public Notice*; the

*LMS Second Report and Order;*<sup>10</sup> *Memorandum Opinion and Order and Further Notice of Proposed Rule Making;*<sup>11</sup> Part 90, Subpart M of the Commission's Rules concerning Transportation Infrastructure Radio Service; Subpart X of the Commission's Rules concerning Competitive Bidding Procedures; and Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices and pronouncements, including orders on delegated authority or by the Commission relevant to one or more of the licenses or otherwise pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp at <ftp://www.fcc.gov> or the FCC Auctions World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. ("ITS"), at (202) 314-3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 98-151 for the *Public Coast Third Report and Order*, and FCC 98-157 for the *LMS Second Report and Order*). See also Due Diligence section below.

## **2. Prohibition of Collusion**

To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.<sup>12</sup> Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>13</sup>

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<sup>10</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, PR Docket No. 93-61, 13 FCC Rcd 15182 (1998), 63 Fed. Reg. 40659 (July 30, 1998) ("LMS Second Report and Order").

<sup>11</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PR Docket No. 93-61, 12 FCC Rcd 13942 (1997) ("Memorandum Opinion and Order and Further Notice of Proposed Rule Making").

<sup>12</sup> See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, ¶¶ 7-8 (2000) ("Part I Fifth Report and Order"); 47 C.F.R. § 1.2105(c)(1).

<sup>13</sup> See *In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977, ¶ 11 (1998) ("Nevada Wireless").

However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>14</sup> In Auction No. 39, for example, the rule would apply to any VHF Public Coast applicants bidding for the same VPC, and to any LMS applicants bidding for the same EA. Therefore, applicants that apply to bid for any license in a VPC or EA would be precluded from communicating after filing the FCC Form 175 short-form application with any other applicant for a license in the same VPC or EA. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175.<sup>15</sup> If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas.<sup>16</sup> By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Section 1.2105(c). In addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>17</sup> Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation.

A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment I.

### **3. Due Diligence**

The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

#### **a. VHF Public Coast**

Potential bidders are reminded that there are a number of incumbent VHF Public Coast Station licensees and Private Land Mobile Radio (PLMR) licensees already operating in the 156-162 MHz band. Such incumbents must be protected from harmful interference by VHF Public Coast Station geographic area

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<sup>14</sup> See *id.* at 11978.

<sup>15</sup> See 47 C.F.R. § 1.2105(c). Note that, unless otherwise indicated, all references herein to Commission's rules are to the amended rules that will be in effect as of the start date of Auction No. 39.

<sup>16</sup> See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995) (rel. October 26, 1995).

<sup>17</sup> See 47 C.F.R. § 1.65.

licensees in accordance with the Commission’s Rules.<sup>18</sup> These limitations may restrict the ability of such VPC geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware of agreements between the United States and Canada that affect the assignment and use of VHF frequencies in certain parts of inland border VPCs.<sup>19</sup> Potential bidders are solely responsible for investigating and evaluating the degree to which these matters may affect spectrum availability in areas where they seek inland border VPC licenses.

Potential bidders may obtain information regarding incumbent VHF Public Coast licensees through the Bureau’s licensing databases on the World Wide Web at <http://www.fcc.gov/wtb>. In particular, information can be searched online by selecting “Databases” and then “Search the Wireless Databases Online” (<http://gullfoss2.fcc.gov/cgi-bin/ws.exe/genmen/index.htm>), or by selecting “Download the WTB Databases” (<http://www.fcc.gov/wtb/databases.html>). Information on previously auctioned licenses can be obtained at <http://www.fcc.gov/wtb/uls>.

#### **b. LMS**

Potential bidders are reminded that LMS operates in the 902-928 MHz frequency band. This band is allocated for primary use by Federal Government radiolocation systems. Next, in order of priority, are Industrial, Scientific and Medical devices. Federal Government fixed and mobile and LMS systems are secondary to these uses. The remaining uses of the 902-928 MHz band include licensed amateur radio operations and unlicensed Part 15 equipment, both of which are secondary to all other uses of the band. Part 15 low power devices include, but are not limited to, those used for automatic meter reading, inventory control, package tracking and shipping control, alarm services, local area networks, internet access, and cordless telephones. The amateur radio service is used by technically inclined private citizens to engage in self-training, information exchange, and radio experimentation. In the *LMS Report and Order*, the Commission recognized the important contribution to the public provided by Part 15 technologies and amateur radio operators and sought to develop a band plan that would maximize the ability of these services to coexist with LMS systems.<sup>20</sup>

The Commission adopted the *LMS Report and Order* with an eye toward minimizing potential interference within and among the various users of the 902-928 MHz band. The Commission’s band plan accordingly permits secondary operations across the entire band by users of unlicensed Part 15 devices and amateur licensees.<sup>21</sup> At the same time, the band plan separates non-multilateration from multilateration LMS systems in all but one subband so as to avert interference.<sup>22</sup> The *LMS Report and Order* also established limitations on LMS systems’ interconnection with the public switched network and set forth a number of

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<sup>18</sup> See 47 C.F.R. §§ 80.773, 90.723(i), 90.763(b)(1)(i). See also *Public Coast Third Report and Order*, ¶¶ 17-18.

<sup>19</sup> The availability of channel pairs throughout inland border VPCs may be affected by agreements between the United States and Canada regarding the assignment and use of VHF frequencies near the U.S.-Canadian border. See 47 C.F.R. §§ 80.57, 80.371(c). See also *Public Coast Third Report and Order*, ¶ 8.

<sup>20</sup> See *LMS Report and Order*, 10 FCC Rcd at 4714, ¶ 34.

<sup>21</sup> *Id.* at 4714-15, ¶¶ 35-36.

<sup>22</sup> *Id.* at 4722-23, ¶¶ 46-49.

technical requirements intended to ensure successful coexistence of all the services authorized to operate in the band.<sup>23</sup>

Potential bidders may obtain information about LMS licenses through the Bureau's licensing databases on the World Wide Web at <http://www.fcc.gov/wtb/uls>.

Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority ("STA"), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to particular incumbent multilateration LMS licensees.

Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at [ulscomm@fcc.gov](mailto:ulscomm@fcc.gov). The hotline is available to assist with questions Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems.

Further, potential bidders are strongly encouraged to physically inspect any sites located in, or near, the geographic area for which they plan to bid.

Finally, potential bidders are strongly encouraged to conduct their own research prior to Auction No. 39 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 39 are strongly encouraged to continue such research during the auction.

#### **4. Bidder Alerts**

All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.<sup>24</sup> Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

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<sup>23</sup> For example, under the Commission's rules, in any one market, LMS licensees may not hold the A block, or sub-band license in combination with the license for B or C block, but may hold licenses for B block and C block in combination. *See* 47 C.F.R. §§ 90.353(d) and (f); *LMS Report and Order*, 10 FCC Rcd at 4722-23, ¶¶ 46-49; Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, PR Docket No. 93-61, 12 FCC Rcd 13942, 13959, ¶43 (1998). *See also* Letter to Eric W. DeSilva, Wiley Rein & Felding, from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 99-1731 (rel. August 30, 1999) (Winning bidder at the close of the auction for both the Block A and Block B licenses in the same markets was disqualified from having winning bids in both blocks and subsequently withdrew its application, thereby being subject to default payments with respect to its winning bids for those licenses).

<sup>24</sup> *See* 47 C.F.R. § 1.2105.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 39 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 39 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

## **5. National Environmental Policy Act (“NEPA”) Requirements**

Licensees must comply with the Commission’s rules regarding the National Environmental Policy Act (NEPA).<sup>25</sup> The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission’s NEPA rules for each such facility.<sup>26</sup> The Commission’s NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

### **C. Auction Specifics**

#### **1. Auction Date**

The auction will begin on Wednesday, June 6, 2001. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all

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<sup>25</sup> See 47 C.F.R. Ch. 1, Subpart I.

<sup>26</sup> See 47 C.F.R. §§ 1.1305-1.1319.

licenses will be conducted on each business day until bidding has stopped on all licenses.

## **2. Auction Title**

Auction No. 39 – VHF Public Coast and Location and Monitoring Service

## **3. Bidding Methodology**

The bidding methodology for Auction No. 39 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

## **4. Pre-Auction Dates and Deadlines**

Auction Seminar .....	April 24, 2001
Short-Form Application (FCC FORM 175) .....	May 4, 2001; 6:00 p.m. ET
Upfront Payments (via wire transfer) .....	May 18, 2001; 6:00 p.m. ET
Orders for Remote Bidding Software .....	May 21, 2001; 6:00 p.m. ET
Mock Auction .....	June 4, 2001
Auction Begins .....	June 6, 2001

## **5. Requirements For Participation**

Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, May 4, 2001.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, May 18, 2001.
- Comply with all provisions outlined in this public notice.

## **6. General Contact Information**

### **GENERAL AUCTION INFORMATION**

General Auction Questions  
Seminar Registration  
Orders for Remote Bidding Software

FCC Auctions Hotline

(888) 225-5322, Press Option #2  
or direct (717) 338-2888

Hours of service: 8 a.m. – 5:30 p.m. ET

### **AUCTION LEGAL INFORMATION**

Auction Rules, Policies, Regulations

Auctions and Industry Analysis Division

Legal Branch (202) 418-0660

### **LICENSING INFORMATION**

Rules, Policies, Regulations  
Licensing Issues  
Due Diligence  
Incumbency Issues

**Public Coast** - Public Safety and Private Wireless  
Division - (202) 418-0680

**LMS** – Commercial Wireless Division –  
(202) 418-0620

### **TECHNICAL SUPPORT**

Electronic Filing Assistance  
Software Downloading

FCC Auctions Technical Support Hotline  
(202) 414-1250 (Voice),  
(202) 414-1255 (TTY)

Hours of service: Monday through Friday 7 a.m. to 10:00 p.m. ET, Saturday, 8:00 a.m. to 7:00 p.m. ET, Sunday, 12:00 noon to 6:00 p.m. ET.

#### **PAYMENT INFORMATION**

Wire Transfers  
Refunds

FCC Auctions Accounting Branch  
(202) 418-1995  
(202) 418-2843 (Fax)

#### **TELEPHONIC BIDDING** **FCC COPY CONTRACTOR**

Additional Copies of  
Commission Documents

Will be furnished only to qualified bidders  
International Transcription Services, Inc.  
445 12<sup>th</sup> Street, SW Room CY-B400  
Washington, DC 20554  
(202) 314-3070

#### **PRESS INFORMATION**

Meribeth McCarrick (202) 418-0654

#### **FCC FORMS**

(800) 418-3676 (outside Washington, DC)  
(202) 418-3676 (in the Washington Area)  
<http://www.fcc.gov/formpage.html>

#### **FCC INTERNET SITES**

<http://www.fcc.gov>  
<ftp://ftp.fcc.gov>  
<http://www.fcc.gov/wtb/auctions>

## **II. SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS**

Guidelines for completion of the short-form application (FCC Form 175) are set forth in Attachment D to this public notice. The short-form application seeks the applicant's name and address, legal classification, status, small and very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed below in Section II.D., that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

### **A. License Selection**

Progeny suggests that the Commission allow bidders to select all of the available LMS licenses without selecting all available VHF Public Coast licenses.<sup>27</sup> This would be accomplished on the FCC Form 175 through the use of two separate boxes that would allow bidders to select all LMS licenses offered in the auction, or all VHF Public Coast licenses offered in the auction. Progeny also suggests that, because some bidders may desire to bid on both sets of licenses, the Commission should permit bidders to specify both "ALL" boxes. Progeny contends that otherwise the Commission would be creating collusion problems that would not otherwise exist in a normal one-service auction.<sup>28</sup> We agree and will adopt mechanisms

<sup>27</sup> Progeny Reply Comments at 5.

<sup>28</sup> *Id.*

consistent with these proposals for Auction No. 39.

### **B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)**

All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules.<sup>29</sup> Specifically, in completing the FCC Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in Section 1.2112 of the Commission's rules.<sup>30</sup>

### **C. Consortia And Joint Bidding Arrangements (FCC Form 175 Exhibit B)**

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. *See* 47 C.F.R. §§ 1.2105(a)(2)(viii) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. *See* 47 C.F.R. § 1.2105(a)(2)(ix). As discussed above, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline.<sup>31</sup> Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.<sup>32</sup> While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

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<sup>29</sup> 47 C.F.R. §§ 1.2105, 1.2112. Section 1.2105 requires the disclosure on the short-form of applicant ownership information as set forth in Section 1.2112. Note that both of these sections were revised in the *Part 1 Fifth Report and Order*. *See Part 1 Fifth Report and Order*, 15 FCC Rcd at 15293, Appendix A.

<sup>30</sup> 47 C.F.R. § 1.2112.

<sup>31</sup> *See* Section 1.B.2, above.

<sup>32</sup> *See* 47 C.F.R. § 1.2105(c)(4)(i), (ii).

## **D. Eligibility**

### **1. Bidding Credit Eligibility (FCC Form 175 Exhibit C)**

Bidding credits are available to small and very small businesses, or consortia thereof, as defined in 47 C.F.R. § 80.1252(b)(1)(2) and (5) for VHF Public Coast, and 47 C.F.R. § 90.1103(b)(1)(2) for LMS. A bidding credit represents the amount by which a bidder's winning bids are discounted.<sup>33</sup> The size of the bidding credit depends on the average annual gross revenues for the preceding three years of the bidder, together with its affiliates and controlling interests of the bidder and its affiliates:

- A bidder with average annual gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for VHF Public Coast and LMS licenses;<sup>34</sup>
- A bidder with average annual gross revenues of not more than \$3 million for the preceding three years receives a 35 percent discount on its winning bids for VHF Public Coast and LMS licenses.<sup>35</sup>

Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

### **2. Tribal Land Bidding Credit**

To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* Part V.C.

### **3. Applicability of Part 1 Attribution Rules**

#### **a. Controlling Interest Standard.**

On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*,<sup>36</sup> in which the Commission, *inter alia*, adopted a “controlling interest” standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions.<sup>37</sup> The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding.<sup>38</sup> Part 1 rules that

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<sup>33</sup> *See* 47 C.F.R. §§ 80.1252(b)(1)(2), 90.1103(b)(1)(2).

<sup>34</sup> *See* 47 C.F.R. §§ 80.1252(b)(1), 90.1103(b)(1).

<sup>35</sup> *See* 47 C.F.R. §§ 80.1252(b)(2), 90.1103(b)(2).

<sup>36</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15293, ¶ 59.

<sup>37</sup> The eligibility for small business preferences, will be determined based on the attribution rules in effect at the short-form application deadline. *Id.* at ¶ 67. *See Part 1 Fifth Report and Order*, 65 Fed. Reg. 52,323 (August 29, 2000) (summary).

<sup>38</sup> *Part 1 Fifth Report and Order*, ¶ 78. In addition to the attribution rule change, compare, *e.g.*, 47 C.F.R. § 24.720(e) (definition of “Rural Telephone Company” in the rules) with 47 C.F.R. § 1.2110(c)(4) (definition of “Rural Telephone Company” in the Part 1 rules).

supersede inconsistent service-specific rules will control in Auction No. 39.<sup>39</sup> *Accordingly, the “controlling interest” standard as set forth will be in effect for Auction No. 39, even if conforming edits to the CFR are not made prior to the auction.*

**b. Control.**

The term “control” includes both *de facto* and *de jure* control of the applicant.<sup>40</sup> Typically, *ownership of at least 50.1 percent of an entity’s voting stock evidences de jure control.* *De facto* control is determined on a case-by-case basis.<sup>41</sup> The following are some common indicia of control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- the entity plays an integral role in management decisions.

**c. Attribution for Small and Very Small Business Eligibility.**

In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interest holders. The Commission does not impose specific equity requirements on controlling interest holders. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and their affiliates will be counted in determining small business eligibility.

A consortium of small or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of which *individually* must satisfy the definition of small or very small business in Section 80.1252(b) or 90.1103(b). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests’ affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

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<sup>39</sup> See *Part I Third Report and Order* at 382, ¶ 5; *Part I Fifth Report and Order*, ¶ 78.

<sup>40</sup> 47 C.F.R. § 1.2110 (c)(2).

<sup>41</sup> For further guidance on the issue of *de facto* control, see the Commission’s affiliation rule at 47 C.F.R. § 1.2110(c)(5); *see also* Ellis Thompson Corp., 10 FCC Rcd 12554, 12555-56 (1994), in which the Commission identified the following factors used to determine control of a business: (1) use of facilities and equipment; (2) control of day-to-day operations; (3) control of policy decisions; (4) personnel responsibilities; (5) control of financial obligations; and (6) receipt of monies and profits; *Intermountain Microwave*, 12 FCC 2d. 559 (1963), and *Application of Baker Creek Communications, LP, For Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998).

#### 4. Application Showing

Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.<sup>42</sup>

Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (1) the applicant, (2) the applicant's affiliates, (3) the applicant's controlling interest holders, and (4) the affiliates of the applicant's controlling interest holders. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

#### E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency.<sup>43</sup> In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency.<sup>44</sup> **Applicants must include this statement as Exhibit D of the FCC Form 175.** If any of an applicant's controlling interests holders or their affiliates, as defined by Section 1.2110 of the Commission's rules (as recently amended in the *Part 1 Fifth Report and Order*) have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached statement.<sup>45</sup> Prospective bidders are reminded that the statement must be made under penalty

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<sup>42</sup> See 47 C.F.R. §§ 80.1252(b), 90.1103(b), 1.2105.

<sup>43</sup> See 47 C.F.R. § 1.2105(a)(2)(x).

<sup>44</sup> See 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>45</sup> See *Part 1 Fifth Report and Order*, ¶ 42. We note that if any one of an applicant's controlling interests or their affiliates as defined by Section 1.2110 of the Commission's rules is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files its FCC Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x) of the Commission's rules and will not be eligible to participate in Auction No. 39. 47 C.F.R. §§ 1.2110; 1.2105(a)(2)(x).

of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

“Former defaulters” — *i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 39, provided that they are otherwise qualified. However, as discussed *infra* in Section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.<sup>46</sup>

#### **F. Unjust Enrichment Payments**

Auction No. 39 bidders should also note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit.<sup>47</sup>

#### **G. Installment Payments**

Installment payment plans will not be available in Auction No. 39.

#### **H. Other Information (FCC Form 175 Exhibits E and F)**

Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c)(3), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

#### **I. Minor Modifications to Short-Form Applications (FCC Form 175)**

After the short-form filing deadline (May 4, 2001), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). *See* 47 C.F.R. § 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A668 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418-0660.

#### **J. Maintaining Current Information in Short-Form Applications (FCC Form 175)**

Applicants have an obligation under 47 C.F.R. §1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible

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<sup>46</sup> *See* 47 C.F.R. § 1.2106(a).

<sup>47</sup> *See* 47 C.F.R. § 1.2111(d), (e)(2)-(3).

decisional significance in information contained in FCC Form 175 applications, as defined by 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

### **III. PRE-AUCTION PROCEDURES**

#### **A. Auction Seminar**

On Tuesday, April 24, 2001, the FCC will sponsor a free seminar for Auction No. 39 at the Federal Communications Commission, located at 445 12<sup>th</sup> Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the VHF Public Coast and LMS spectrum and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

To register, complete the registration form attached hereto as Attachment B and submit it by Friday, April 20, 2001. Registrations are accepted on a first-come, first-served basis.

#### **B. Short-Form Application (FCC Form 175) — Due May 4, 2001**

In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on May 4, 2001. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See Part III.D, below.*

##### **1. Electronic Filing**

Applicants must file their FCC Form 175 applications electronically.<sup>48</sup> Applications may generally be filed at any time beginning at noon on April 24, 2001, until 6:00 p.m. ET on May 4, 2001. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times during the filing window until the May 4, 2001 deadline.

Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Forms 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*. You can also use the Form 175 “Support” feature to obtain contact information.

##### **2. Completion of the FCC Form 175**

Applicants should carefully review 47 C.F.R. § 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the

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<sup>48</sup>

*See* 47 C.F.R. § 1.2105(a).

form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

### **3. Electronic Review of FCC Form 175**

The FCC Form 175 electronic Search feature may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

### **C. Application Processing and Minor Corrections**

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the May 4, 2001, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).<sup>49</sup>

### **D. Upfront Payments — Due May 18, 2001**

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 (Revised 2/00) that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on May 18, 2001.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 39 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the May 18, 2001, deadline will result in dismissal of the application and disqualification from participation in the auction.

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<sup>49</sup> See 47 C.F.R. § 1.2105. See also Two Way Radio of Carolina, Inc., *Memorandum, Opinion and Order*, 14 FCC Rcd 12035 (1999).

## 1. Making Auction Payments by Wire Transfer

Wire transfer payments must be received by 6:00 p.m. ET on May 18, 2001. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261  
Receiving Bank: Mellon Pittsburgh  
BNF: FCC/AC 910-0171  
OBI Field: (Skip one space between each information item)  
“AUCTIONPAY”  
TAXPAYER IDENTIFICATION NO.: (same as FCC Form 159, block 12)  
PAYMENT TYPE CODE (enter “A39U”)  
FCC CODE 1 (same as FCC Form 159, block 24A: “39”)  
PAYER NAME (same as FCC Form 159, block 2)  
LOCKBOX NO. # 358430

**NOTE:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write “Wire Transfer — Auction Payment for Auction Event No. 39.” **Bidders should confirm timely receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.**

## 2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

## 3. Amount of Upfront Payment

In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned.<sup>50</sup> In addition, as required by the *Part 1 Fifth Report and Order*, the upfront payment amount for “former defaulters,” *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, will be fifty percent more than the normal amount required to be paid.<sup>51</sup> In the *Auction No. 39 Comment Public*

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<sup>50</sup> Amendment of Part 1 of the Commission’s rules — Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-5698, ¶ 16 (1997).

*Notice,*<sup>52</sup> the Bureau proposed upfront payments for Auction No. 39 using the following formula:

- **VHF Public Coast**

Inland VPC Licenses:	\$0.0075 * MHz * Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum upfront payment of \$2,500 per license.
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- **LMS**

Block A:	\$0.0004 * MHz * Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum upfront payment of \$1,000 per license.
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Block B:	\$0.0005 * MHz * Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum upfront payment of \$1,000 per license.
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Block C:	\$0.0005 * MHz * Pops (the results rounded up to the nearest hundred for results less than \$10,000 and to the nearest thousand for results greater than \$10,000) with a minimum upfront payment of \$1,000 per license.
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Only one commenter addressed whether the Bureau should adopt its proposed formulae for calculating upfront payments for VHF Public Coast and LMS. Havens contends that the proposed formulae for calculating upfront payments for LMS is reasonable given the shared nature, encumbrances, issues and formative stage of LMS.<sup>53</sup> In addition, Havens contends that proposed upfront payments for VHF Public Coast licenses should not exceed 50 percent of the initial upfront payments in the first VHF Public Coast auction, *i.e.*, Auction No. 20. Havens contends that the markets that remain are worth less than one half the value of those sold in Auction No. 20.<sup>54</sup>

We adopt our proposed formulae for calculating upfront payments for VHF Public Coast and LMS. Upon review of prices for licenses awarded in the previous VHF Public Coast and LMS auctions, we find that the proposed upfront payments are appropriate when compared with the final prices of awarded licenses and bids received prior to the highest bids which were subsequently withdrawn (*e.g.*, second highest bids).

Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 39, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum

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<sup>51</sup> *Part I Fifth Report and Order*, ¶¶ 40-42; 47 C.F.R. § 1.2106(a); *see also C Block Fourth Report and Order* at 15,761-62, ¶ 34; 47 C.F.R. §§1.2105(a)(2)(xi); 24.709(a)(5).

<sup>52</sup> *Auction No. 39 Comment Public Notice* at 3.

<sup>53</sup> Havens Comments at 3.

<sup>54</sup> *Id.*

amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

In order to be able to place a bid on a license, in addition to being qualified for and having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline. **Please note: The total upfront payment does not define the total dollar amount a bidder may bid on any given license.**

Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

**NOTE:** An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

#### **4. Applicant's Wire Transfer Information for Purposes of Refunds for Upfront Payments**

The Commission will use wire transfers for all Auction No. 39 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by May 4, 2001. The refund will be returned to the payer of record as identified on the FCC Form 159, unless otherwise indicated by such payer. For additional information, please call (202) 418-1995.

Name of Bank  
ABA Number  
Contact and Phone Number  
Account Number to Credit  
Name of Account Holder  
Correspondent Bank (if applicable)  
ABA Number  
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.E., *below*.

#### **E. Auction Registration**

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing a portion of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed on the FCC Form 175.

Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, June 1, 2001, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12<sup>th</sup> St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

#### **F. Remote Electronic Bidding Software**

Qualified bidders are allowed to bid electronically or telephonically. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is \$175.00 and must be ordered by Monday, May 21, 2001. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 39. If bidding telephonically, the telephonic bidding phone number will be supplied in each Federal Express mailing containing the confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, a FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should print this form, complete it, and fax it to (717) 338-2850. A manual copy of this form is also included as Attachment F in this public notice.

#### **G. Mock Auction**

All qualified bidders will be eligible to participate in a mock auction on Monday, June 4, 2001. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

## **IV. AUCTION EVENT**

The first round of bidding for Auction No. 39 will begin on Wednesday, June 6, 2001. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

### **A. Auction Structure**

#### **1. Simultaneous Multiple Round Auction**

In the *Auction No. 39 Comment Public Notice*, we proposed to award all licenses in Auction No. 39 in a single, simultaneous multiple-round auction.<sup>55</sup> We received no comment on this issue. Therefore, we conclude that it is operationally feasible and appropriate to auction the Public Coast and LMS licenses through a single, simultaneous multiple-round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

#### **2. Maximum Eligibility and Activity Rules**

In the *Auction No. 39 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder.<sup>56</sup> We received no comments on this issue.

For Auction No. 39 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in Part IV.A.(4), prospective bidders are cautioned to calculate their upfront payments carefully. As a reminder, the total upfront payment does not define the total dollar amount a bidder may bid on any given license.

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see "Minimum Accepted Bids" in Part IV.B.(3), below*). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Part IV.A.(4) and "Stage Transitions" in Part IV.A.(5), *below*, we adopt them for Auction No. 39.

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<sup>55</sup> See *Auction No. 39 Comment Public Notice* at 3.

<sup>56</sup> *Id.* at 3.

### **3. Activity Rule Waivers and Reducing Eligibility**

In the *Auction No. 39 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction.<sup>57</sup> We received no comment on this issue.

Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder’s current bidding eligibility despite the bidder’s activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an “automatic waiver”) at the end of any round where a bidder’s activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder’s eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in “Auction Stages” (*see* Part IV.A.(4) discussion *below*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder’s eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

### **4. Auction Stages**

In the *Auction No. 39 Comment Public Notice*, we proposed to divide the auction in two stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility.<sup>58</sup> In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 98 percent of its current bidding eligibility. We received no comment on this issue.

We conclude that the auction will be composed of two stages, which are each defined by an increasing

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<sup>57</sup> *Id.* at 4-5.

<sup>58</sup> *Id.* at 4.

activity rule. We will adopt our proposals for the activity rules. Below are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

**Stage One:** In each round of Stage One, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

**Stage Two:** In each round of Stage Two, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (50/49).

**CAUTION:** Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 39.

## 5. Stage Transitions

In the *Auction No. 39 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately 30 percent or below for three consecutive rounds of bidding. However, we further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.<sup>59</sup> We received no comments on this subject.

We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines, the auction will start in Stage One and it will advance to the next stage (Stage Two) when, in each of three consecutive rounds of bidding, the high bid has increased on approximately 30 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the

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<sup>59</sup> *Id.*

percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 39.

## **6. Auction Stopping Rules**

For Auction No. 39, the Bureau proposed to employ a simultaneous stopping rule.<sup>60</sup> Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

The Bureau also proposed a modified version of the simultaneous stopping rule. This modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.<sup>61</sup> Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses. We received no comment on this issue.

Thus, we adopt all of the above proposals concerning the auction stopping rules. Auction No. 39 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 39, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. The substitutability among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of these stopping rules.

## **7. Auction Delay, Suspension, or Cancellation**

In the *Auction No. 39 Comment Public Notice*, we proposed that, by public notice or by announcement

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<sup>60</sup> *Id.* at 9.

<sup>61</sup> *Id.* at 9-10.

during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.<sup>62</sup> We received no comment on this issue.

Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

## **B. Bidding Procedures**

### **1. Round Structure**

The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. This public notice will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the above public notice.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

### **2. Reserve Price or Minimum Opening Bid**

*Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>63</sup> Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>64</sup> Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.<sup>65</sup> The Commission concluded that the

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<sup>62</sup> *Id.* at 5.

<sup>63</sup> See Balanced Budget Act, section 3002(a), 47 U.S.C. § 309(j)(4)(F).

<sup>64</sup> See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 375, 455-456, ¶ 141 (1997) ("Part 1 Third Report and Order").

Bureau should have the discretion to employ either or both of these mechanisms for future auctions.<sup>66</sup>

In the *Auction No. 39 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 39 and to retain discretion to lower the minimum opening bids.<sup>67</sup> Specifically, for Auction No. 39, the Bureau proposed the following formula for minimum opening bids:

- **VHF Public Coast**

Inland VPC Licenses:	\$0.011 * MHz * Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum of no less than \$2,500 per license.
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- **LMS**

Block A:	\$0.0004 * MHz * Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum of no less than \$1,000 per license.
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Block B:	\$0.0005 * MHz * Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum of no less than \$1,000 per license.
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Block C:	\$0.0005 * MHz * Pops (the result rounded up to the nearest hundred for results less than \$10,000 and to the nearest thousand for results greater than \$10,000) with a minimum of no less than \$1,000 per license.
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In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.<sup>68</sup>

Commenters were divided on whether the Bureau should adopt its proposed formulae for calculating minimum opening bids for LMS. Havens contends that the proposed formulae for calculating minimum opening bids for LMS is reasonable given the shared nature, encumbrances, issues and formative stage of LMS.<sup>69</sup> Progeny contends that the Commission should lower its minimum opening bids. Progeny contends that, since this auction is a second auction and contains many smaller or rural markets that would be of little interest to new LMS entrants, the Commission should therefore err on the side of underestimating demand for this spectrum.<sup>70</sup>

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<sup>65</sup> *Id.* at 5-6.

<sup>66</sup> *Id.*

<sup>67</sup> See *Auction No. 39 Comment Public Notice* at 5-6.

<sup>68</sup> *Id.* at 5-6.

<sup>69</sup> Havens Comments at 3.

<sup>70</sup> Progeny Reply Comments at 4.

One commenter addressed the proposed formulae for calculating minimum opening bids for VHF Public Coast. Havens contends that the proposed formulae for calculating minimum opening bids for VHF Public Coast should be reduced such that they do not exceed fifty percent of the minimum opening bids in the first auction for VHF Public Coast licenses, *i.e.*, Auction No. 20.<sup>71</sup> Havens contends that the markets that remain are worth less than half the price and contain smaller and less densely populated markets than those markets offered in Auction No. 20.<sup>72</sup>

We will adopt minimum opening bids for Auction No. 39, which are reducible at the discretion of the Bureau. We reiterate that upon review of prices for licenses awarded in the previous VHF Public Coast and LMS auctions, we find that the proposed minimum opening bids are appropriate when compared with the final prices of awarded licenses and bids received prior to the highest bids which were subsequently withdrawn (*e.g.*, second highest bids). Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest.<sup>73</sup>

We conclude that the adopted formulae presented here best meets the objectives of our authority in establishing reasonable minimum opening bids. We have noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices, and that we must balance the revenue raising objective against our other public interest objectives in setting the minimum bid level.<sup>74</sup> For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses.

As a final safeguard against unduly high pricing, minimum opening bids are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

### **3. Bid Increments and Minimum Accepted Bids**

In the *Auction No. 39 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum bid increments.<sup>75</sup> We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate.<sup>76</sup> We received no comment on this issue.

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<sup>71</sup> Havens Comments at 3.

<sup>72</sup> *Id.*

<sup>73</sup> Section 309(j)(4)(F) of the Communications Act directs the Commission to “prescribe methods by which a reasonable reserve price will be required, or a minimum bid established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest.”

<sup>74</sup> See *Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, Order*, 12 FCC Rcd 16354, 16358 (1997).

<sup>75</sup> See *Auction No. 39 Comment Public Notice* at 7-8.

<sup>76</sup> *Id.*

We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G.

We adopt our proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent of the license value), and the maximum at 0.2 (20 percent of the license value). The Bureau retains the discretion to change the minimum bid increment if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 39 if circumstances warrant.

#### **4. High Bids**

Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tied high bids (identical gross bid amounts) for a license during a round, the earliest of the tied bids will be the standing high bid at the end of the round. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

#### **5. Bidding**

During a bidding round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 39.

A bidder's ability to bid on specific licenses in the first round of the auction is determined by three factors: (1) the licenses applied for on FCC Form 175, (2) eligibility restrictions on those licenses, and (3) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

The bidding software requires each bidder to login to the FCC auction system during the bidding round

using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations after they submit their bids.

The bid entry screen of the Automated Auction System software for Auction No. 39 allows bidders to place multiple increment bids. Specifically, high bids may be increased from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter “1” in the bid increment multiplier column and press submit.

For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter “1” in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

## **6. Bid Removal and Bid Withdrawal**

In the *Auction No. 39 Comment Public Notice*, we proposed bid removal and bid withdrawal rules.<sup>77</sup> With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder’s discretion.

In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for Auction No. 39, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or “gaming” in this auction.

The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two

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<sup>77</sup> See *Auction No. 39 Comment Public Notice* at 8-9.

rounds. These rounds will be at the bidder’s discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). Bidders should note that abuse of the Commission’s bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment.<sup>78</sup> The Commission will serve as a “place holder” on the license until a new acceptable bid is submitted on that license.

**Procedures.** Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bid” function in the software, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder’s activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder’s activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 39.

Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the “withdraw bid” function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g).

**Calculation.** Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.<sup>79</sup> If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidder to most efficiently allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

In the *Part 1 Fifth Report and Order*, the Commission modified Section 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments.<sup>80</sup> As amended, Section 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the bid

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<sup>78</sup> The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

<sup>79</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>80</sup> See *Part 1 Fifth Report and Order*, ¶ 15; 47 C.F.R. § 1.2104(g)(1).

withdrawals. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed at the close of the subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.<sup>81</sup>

## **7. Round Results**

Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 39 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

## **8. Auction Announcements**

The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

## **9. Maintaining the Accuracy of FCC Form 175 Information**

As noted in Part II.I., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to:

Louis Sigalos, Deputy Chief  
Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 4-A668  
Washington, DC 20554

A separate copy of the letter should be mailed to Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 4-B524, Washington, DC 20554. Questions about other changes should be directed to Kenneth Burnley at (202) 418-0660.

## **V. POST-AUCTION PROCEDURES**

### **A. Down Payments and Withdrawn Bid Payments**

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

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<sup>81</sup> See *Part 1 Fifth Report and Order*, ¶ 15.

Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). *See* 47 C.F.R. § 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 C.F.R. § 1.2104(g), as discussed in “Bid Removal and Bid Withdrawal,” Part IV.B.(6). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### **B. Long-Form Application**

Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each license won through Auction No. 39. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small and very small business bidding credits. *See* 47 C.F.R. § 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

### **C. Tribal Land Bidding Credit**

A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 C.F.R. §§ 1.2107 and 1.2110(e). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to specific performance criteria as set forth in 47 C.F.R. §1.2110(e).

For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, *see* Extending Wireless Telecommunications Services to Tribal Lands, Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 99-266 released June 30, 2000; Public Notice DA 00-2219, released September 28, 2000, entitled Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services to Qualifying Tribal Lands; Public Notice DA 00-2836, released December 14, 2000, entitled Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands; Public Notice DA 01-613, released March 8, 2001, entitled Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits and <http://www.fcc.gov/wtb/auctions> and click on *Information on Tribal Land Bidding Credits*.

### **D. Default and Disqualification**

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. §

1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 C.F.R. § 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 C.F.R. § 1.2109(d).

#### **E. Refund of Remaining Upfront Payment Balance**

All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 39 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. The refund will be returned to the payer of record as identified on the FCC Form 159, unless otherwise indicated by such payer. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to:

Federal Communications Commission  
Financial Operations Center  
Auctions Accounting Group  
Shirley Hanberry  
445 12th Street, SW, Room 1-A824  
Washington, DC 20554

Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418-1995.

**Media Contact:** Meribeth McCarrick at (202) 418-0654

**Auctions and Industry Analysis Division:** Kenneth Burnley, Auctions Attorney, or Lyle Ishida, Auctions Analyst, at (202) 418-0660; Linda Sanderson, Project Manager, at (717) 338-2888.

**Public Safety and Private Wireless Division:** Keith Fickner, Policy and Rules Branch at (202) 418-7308 or Kim Kleppinger, Licensing and Technical Analysis Branch at (717) 338-2666.

**Commercial Wireless Division:** Gary Oshinsky, Policy and Rules Branch at (202) 418-7167 or JoAnn

Epps, Licensing and Technical Analysis Branch at (202) 418-0620.

**- FCC -**

**VI. ATTACHMENT A**

(Place Holder)

**VII. ATTACHMENT B**

**FCC AUCTION SEMINAR REGISTRATION FORM**

**Auction No. 39**

The FCC will sponsor a one-day seminar for Auction No. 39 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC remote bidding software.

A maximum of two representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. Additional seating may be available on a stand-by basis the day of the seminar. The seminar will be held:

Tuesday, April 24, 2001  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554  
Registration 9:30 a.m. - 10:00 a.m.  
Seminar 10:00 a.m. - 2:00 p.m.  
If hotel accommodations are needed  
Please contact 1-888-225-5322 (option #2) for a list of hotels in the area  
\*\*\*\*\*  
To register, complete the form below and  
return no later than  
Friday, April 20, 2001, by mail or fax to:

FCC Auction No. 39  
Auctions Operations Branch  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

FAX: 717-338-2850  
Phone: 717-338-2888

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I/We will attend the Auction No. 39 Seminar, scheduled for Tuesday, April 24, 2001.

Name of attendee: \_\_\_\_\_

Name of attendee: \_\_\_\_\_

Company name: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## VIII. ATTACHMENT C

### ELECTRONIC FILING AND REVIEW OF THE FCC FORM 175

Applicants must submit their FCC Form 175 applications electronically, using either the FCC Auctions System page on the Internet or the FCC Wide-Area Network. The FCC Wide-Area Network will generally be available 24 hours per day. FCC Form 175 applications must be submitted and confirmed by **6:00 p.m. ET on Friday, May 4, 2001**. Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants must press the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

#### A. Software Requirements

Applicants will need to meet the following minimum software requirements:

- Web Browser, either of the following:
  - ◆ Netscape Communicator 4.05 or higher
  - ◆ Microsoft Internet Explorer 4.0 or higher
- PDF Viewer: Adobe Acrobat Reader 4.0 or higher (available at <http://www.adobe.com>)
- If you wish to use the download feature in on the Search Results page, you will need a .tar file extraction utility, e.g., Winzip (available at <http://www.winzip.com>) or Pkzip for Windows (available at <http://www.pkware.com/shareware>).

#### B. Submitting FCC Form 175 Applications

You can submit FCC Form 175 applications electronically via the Internet. Start your web browser and point it to either <https://wbtwww27.fcc.gov/> (primary location) or <https://wbtwww37.fcc.gov/> (secondary location) to obtain the Form 175 Homepage.

**Note:** If you have problems with the Internet, you may submit FCC Form 175 applications via the FCC Wide-Area Network, using Dial-Up Networking. For details, refer to the *Accessing the FCC Network to File FCC Form 175* attachment.

#### 1. Logging On

The Form 175 Homepage has a Form 175 Logon area at the top right. This area provides fields that let you identify yourself to the system before submitting a Form 175 application. Once you have logged on, you can click the **Submit New** link to obtain the *Profile* page for the auction.

## 2. Uploading Attachments

When uploading attachments from the Form 175 *Attachments* page, applicants may use a variety of file formats--including Word 2000 or earlier, WordPerfect 6.x or earlier, Adobe PDF, and ASCII text -- and should verify that the files contain all exhibit information. Also note the following about files to be uploaded:

- Graphics files (e.g., *.bmp*, *.tiff*, *.jpg*) and spreadsheets (e.g., Excel, Lotus) are not supported,
- Word processing files that are uploaded may not contain graphic images.
- Do not include punctuation marks (e.g., ?, ., - ,) in the name of a file to be uploaded. The FCC system will not be able to convert that file.
- Do not upload a password-protected file. The FCC system will not be able to open it or convert it.

The system converts each uploaded attachment to PDF format. (The conversion process generally completes within 30 minutes.) Until the system has converted your file to PDF format, the description field shows *Not Yet Available*.

Repeat this procedure for each additional attachment you want to add. When you have finished adding attachments, click the **Continue to CERTIFICATION** button to obtain the *Certification* page.

If you are unable to read this file after it has been converted, please do the following:

1. Re-upload the attachment.
2. If the file still has not been converted properly, then simplify the formatting of the file.

For example, if you are using a Table structure in a WordPerfect document, remove the Table structure and leave the contents of the table, then re-upload the attachment.

After you have successfully re-uploaded an attachment, please delete the old, unreadable attachment files using their **Delete** links.

## 3. Completing the Submission Procedure

Applicants must press the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. Pressing **SUBMIT Application** produces a *Submission Confirmation* page showing the assigned FCC Account Number. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

## C. Reviewing FCC Form 175 Applications

Once the FCC has completed the 175 Review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <https://wtbwww27.fcc.gov/> (primary location) or <https://wtbwww37.fcc.gov/> (secondary

location). Click the **SEARCH** link at the top of the page. When the *Form 175 Search* page appears, select the search criteria you want and then click the **Submit** button.

**D. Help**

For technical assistance with installing or using FCC software, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 7 a.m. to 10 p.m. ET, Saturday from 8 a.m. to 7 p.m. ET, and Sunday from 12 noon to 6 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

## IX. ATTACHMENT D

# GUIDELINES FOR COMPLETION OF FCC FORM 175 AND EXHIBITS

### A. FCC Form 175

Because of the significance of the FCC Form 175 application to the auction, bidders should especially note the following:

**Company:** Name given is used as your bidder name in the auction.

**Address:** Applicants must provide a street address (not a Post Office box number) for the applicant, suitable for mail or private parcel delivery.

**Legal Classification:** Applicants must indicate their legal classification. The FCC Form 175 requires the applicant to classify itself as an individual, joint venture, partnership, trust, corporation, consortium, association, limited liability company (LLC) or government entity.

**Applicant Status:** Applicants are also requested to indicate their status as a rural telephone company, minority-owned business and/or women-owned business, so that the FCC can monitor its performance in promoting economic opportunities for these designated entities.

**Contact person/address:** If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for an address, telephone number, fax number, and e-mail address. All written communication and registration information will be directed to the applicant's contact person at the address specified on the FCC Form 175. Applicants must provide a street address; no P.O. Box addresses may be used.

**Authorized Bidders:** Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place or withdraw bids for the applicant during the auction.

**Bidding Credit Eligibility:** Applicants that qualify for a small or very small business bidding credit must select the applicable bidding credit (25 percent or 35 percent) in the bidding credit eligibility item on the Form 175. Applicants are advised that this is the sole opportunity applicants have to elect small business or very small business status and claim a bidding credit level (if applicable). There is no opportunity to change the election once the short-form filing deadline passes on May 4, 2001.

**License Selection:** Applicants should select all licenses on which they want to be eligible to bid in the auction. Be advised that there is no opportunity to change this list once the short-form filing deadline passes on May 4, 2001. It is critically important that you confirm the licenses that you have selected because the FCC auction system will not accept bids on licenses for which an applicant has not applied on its FCC Form 175.

**Certifications:** Applicants should carefully read the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and

certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

## **B. Exhibits and Attachments**

In addition to the FCC Form 175 itself, applicants must submit additional information required by the FCC's rules. If attachments are not uploaded, the FCC Form 175 submission process cannot be completed. Although the FCC does not require a particular format for this information, it has developed the following guidelines that will facilitate the processing of short-form applications. The FCC encourages applicants to submit this information using the following format.

**If you find that an attachment has not converted properly to Adobe PDF format, take the following steps:**

- 1) *Simplify the formatting of the file. For example, if using a Table structure in a WordPerfect document, remove the Table structure leaving the contents of the table, re-save the document.*
- 2) *Re-upload the attachment.*
- 3) *When the re-uploaded attachment has successfully converted, delete the failed attachment.*

**Exhibit A -- Applicant Identity and Ownership Information:** 47 C.F.R. § 1.2105(a)(2)(ii) requires each applicant to fully disclose the real party or parties-in-interest in an exhibit to its FCC Form 175 application. Each member of an applicant applying to bid as a small or very small business consortium must provide this information. The following information is required:

### **1. General Information**

<i><b>Applicant Status</b></i>	<i><b>Required Information</b></i>
General Partnership	Name, citizenship, and address of all partners, and the share or interest participation of each partner
Limited Partnership	Name, citizenship, and address of each limited partner whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Corporation	Corporate name and address; and name, title, and citizenship of a responsible officer or director
Limited Liability Corporation	Corporate name and address; and name, address, and citizenship of all members
Trust	Name, citizenship, and address of trustee
None of the above	Name, citizenship, title or other relation to the applicant, and address of a principal or other responsible person

## 2. Ownership Information

### ***Applicant Status***

All applicants

### ***Required Information***

Name, citizenship, and address of all controlling interests of the applicant as defined in Part II.D.(4) of this public notice.

All applicants

Name, citizenship, and address of all parties holding 10 percent or more of each class of stock, warrants, options or debt securities and the amount and percentage held.

All applicants

Name of all parties holding a 10 percent or greater interest in the applicant and the specific amount held.

All applicants

List of all parties holding indirect ownership interests in the applicant as determined by successive multiplication of the ownership percentages in each link of the vertical ownership chain, that equals 10 percent or more of the applicant, except that if the ownership percentage for any link in the chain exceeds 50 percent or represents actual control, it shall be reported as if it were a 100 percent interest.

*Example.* Company A owns 10% of Company B, which owns 60% of Company C, which owns 25% of the applicant. Company B's interest in the applicant would be 25% (the same as Company C's interest since Company B's interest in Company C exceeds 50%), and Company A's interest in the applicant would be 2.5% ( $0.1 * 0.25$ ). Under the 10% attribution benchmark, Company B's interest in the applicant must be reported on the applicant's FCC Form 175 Exhibit A, while Company A's interest in the applicant need not be reported. However, if Company A owned 40% of Company B in the above example, then Company A's interest in the applicant would be 10% ( $0.4 * 0.25$ ), and the applicant would need to report it on the applicant's FCC Form 175 Exhibit A

All applicants

List of any FCC-licensed entity or applicant for an FCC license, in which

- a. the applicant;
- b. any party with a 10 percent or greater interest in the applicant; or
- c. a controlling interest (as discussed in Part II.D.(4) of this public notice) that owns a 10 percent or greater interest of the applicant or 10 percent or more of any class of stock, warrants, options or debt securities of the applicant. (See also 47 C.F.R. § 1.2110) This list must include a description of each such entities' principal business and a description of each such entities' relationship to the applicant.

*Example of a.* The applicant owns 10 percent of Company A (an FCC licensed entity or an applicant for an FCC license). The applicant must list Company A on its FCC Form 175 Exhibit A and provide the required information.

**Applicant Status****Required Information**

*Example of b.* Company A owns 10 percent of the applicant and 10 percent of Company B (an FCC licensed entity or an applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

*Example of c.* Company A owns 55% of the applicant and owns 10 percent of Company B (an FCC licensed entity or an Applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

**Exhibit B – Agreements with Other Parties/Joint Bidding Arrangements:** Applicants must attach an exhibit identifying all parties with which they have entered into any agreements, arrangements or understandings which relate in any way to the licenses being auctioned, including any relating to the post-auction market structure. *See 47 C.F.R. §1.2105(a)(2)(viii).*

Be aware that pursuant to Certification (4) on the FCC Form 175, the applicant certifies that it will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding bid amounts, bidding strategies, or the particular licenses the applicant will or will not bid. *See 47 C.F.R. § 1.2105(a)(2)(ix). To prevent collusion, the Commission's Rules generally prohibit communication among applicants for the same license areas between the initial short-form applications filing deadline and the down payment on licenses won, when such communications concern bids, bidding strategies, or settlements.* 47 C.F.R. § 1.2105(c).

**Exhibit C – Status as a Small Business or Very Small Business:** Applicants claiming status as a very small business or small business must attach an exhibit providing the following information regarding this status.

**Entity****Required Information**

Applicant

Average annual gross revenues for the preceding three years set forth *both separately* (e.g., for each of the three preceding three years individually) *and in the aggregate* (for all of the preceding three years combined). Certification that the average annual gross revenues for the preceding three years do not exceed the required limit, or providing average gross revenues for the 3-year period without providing the gross revenues for each of the preceding three years, is insufficient.

Applicant's Affiliates

*See 47 CFR § 1.2110*

Same information required as discussed above

Applicant's Controlling Interests

*See Part II.D.(4), supra.*

Same information required as discussed above

*Example.* The applicant had gross revenues of \$500,000 in 1997, \$1,000,000 in 1998, and \$3,000,000 in 1999, with average gross revenues for that time period of \$1,500,000. The applicant owns 60% of Company A, making Company A an affiliate of the applicant under Section 1.2110(c)(4)(i)(B), and Company B owns 52% of the applicant (making Company B a controlling interest of the applicant, as defined in Part II.D.(4) of this public notice. The applicant's Exhibit C would look like

<i>Entity</i>	<i>Required Information</i>	
	this:	
Applicant Name		
1997 gross revenues		\$ 500,000
1998 gross revenues		\$ 1,000,000
1999 gross revenues		\$ 3,000,000
Average gross revenues		
for the preceding 3 years		\$ 1,500,000
Company A (an affiliate of the applicant)		
1997 gross revenues		\$ enter amount
1998 gross revenues		\$ enter amount
1999 gross revenues		\$ enter amount
Average gross revenues for the preceding 3 years		\$ enter amount
Company B (a controlling interest in the applicant)		
1997 gross revenues		\$ enter amount
1998 gross revenues		\$ enter amount
1999 gross revenues		\$ enter amount
Average gross revenues for the preceding 3 years		\$ enter amount
<b>TOTAL:</b>	<b>combined average gross revenues for the preceding three years of the applicant, the applicant's affiliates and their controlling interests</b>	

**NOTE:** Each member of an applicant that is applying to bid as a consortium of small or very small businesses must provide this information and qualify for the claimed status.

**Exhibit D – Information Required of All Applicants Regarding Prior Defaults and Prior Delinquencies:** Each applicant must include at Exhibit D a statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency. If any of an applicant's controlling interests holders or their affiliates, as defined by Section 1.2110 of the Commission's rules (as recently amended in the *Part 1 Fifth Report and Order*) has ever been in default on any Commission license or has ever been delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached

statement.

**Exhibit E -- Information Requested of Designated Entities:** Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c), or that are rural telephone companies, may attach an exhibit regarding this status. This information, in conjunction with the information requested in Block 10 of the FCC Form 175, will assist the Commission in monitoring the participation of these "designated entities" in its auctions.

**Exhibit F -- Miscellaneous Information:** Applicants wishing to submit additional information should include it in Exhibit F.

**NOTE: Applicants should not list their TIN numbers on any Exhibit to their FCC Form 175.**

**Completeness:** Applicants must submit all information required by the FCC Form 175 and by applicable rules. Failure to submit required information by the resubmission date will result in dismissal of the application and inability to participate in the auction. *See 47 C.F.R. § 1.2105(b).*

**NOTE: Applicants must press the "SUBMIT Application" button on the "Submittal" page to successfully submit their FCC Form 175.**

**Continuing Accuracy:** Each applicant is responsible for the continuing accuracy and completeness of information furnished in the FCC Form 175 and its exhibits. *See 47 C.F.R. § 1.65.* It is the FCC's position that during the conduct of an auction, thirty business days from a reportable change is a reasonable period of time. Applicants are reminded that they consent to be audited in the certification section of the FCC Form 175 (see certification item number 6).

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications, and as such will be available for public inspection. Required proprietary information may be redacted, or confidentiality may be requested, following the procedures set forth in 47 C.F.R. § 0.459. Such requests must be submitted in writing to Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 4-A668, Washington, DC 20554 (with a separate copy mailed to Kenneth Burnley, Legal Branch, Auctions and Industry Analysis Division, Room 4-B524), in which case the applicant must indicate in Exhibit F that it has filed a confidentiality request. Because the required information bears on applicants' qualifications, the FCC envisions that confidentiality requests will not be routinely granted.

**Waivers:** Applicants requesting waiver of any rules must submit a statement of reasons sufficient to justify the waiver sought. *See 47 C.F.R. §§ 1.3, 1.925.*

## **X. ATTACHMENT E**

### **AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2000 edition)**

#### **A. Upfront Payments**

The following information supplements the standard instructions for FCC Form 159 (Revised 2/00), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 39. Applicants need to complete FCC Form 159 carefully, since:

- Mistakes may affect their bidding eligibility; and
- Lack of consistency between information set forth in FCC Form 159 (Revised 2/00), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the FCC Form 175 Short Form Application are described below:

Block	Number	Required Information
	1	LOCKBOX # - Enter "358430"
	2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
	3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/00).
	4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175, blocks 2 through 5.
	9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
	10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
	24A	Payment Type Code - Enter "A39U"
	25A	Quantity - Enter the number "1"
	26A	Fee Due - Amount of Upfront Payment
	27A	Total Fee - Will be the same amount as 26A

28A     FCC Code 1 - Enter the number "39" (indicating Auction No. 39).

22     Applicant TIN - Same as FCC Form 175, block 7.

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 11 through 18 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave this area blank.

**B.     Winning Bidder Requirements, Down Payments and Final Payments**

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

**XI. ATTACHMENT F**

**FCC BIDDING PREFERENCE/  
REMOTE SOFTWARE ORDER FORM  
Auction No. 39**

*All qualified applicants who plan to participate in this auction must complete the form below.*

Each qualified applicant choosing to bid electronically must purchase their own copy of FCC Remote Bidding Software. Electronic bids will only be accepted from those applicants purchasing the software, however, the software may be copied by the applicant for use by its authorized bidders at different locations.

The price of the FCC Remote Bidding Software is **\$175.00**, which includes a user manual and shipping costs. (Since bidding software is tailored to a specific auction, previous versions will not work for Auction #39.) For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175.

Completed forms should be printed and either faxed or mailed to the address below, ensuring receipt by no later than 6:00 p.m. ET on **Monday, May 21, 2001**.

FCC BIDDING PREFERENCE (Auction No. 39)  
Auction Operations Branch  
1270 Fairfield Rd.  
Gettysburg, PA 17325-7245  
FAX: 717-338-2850

Auction Applicant: \_\_\_\_\_

FCC Assigned Account No. \_\_\_\_\_ Contact Phone: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Address: \_\_\_\_\_

Contact City: \_\_\_\_\_ Contact State: \_\_\_\_\_

Contact Zip: \_\_\_\_\_ Contact Fax: \_\_\_\_\_

Bidding Preference:  Electronic  Telephonic

If planning to bid electronically, please complete the following:

Type:  3.5 Diskette  CD-Rom

Payment of \$175.00 US by:  Check (payable to FCC)  Mastercard  Visa

Credit card number \_\_\_\_\_ Expiration date \_\_\_\_\_

Name on card \_\_\_\_\_

Authorized signature \_\_\_\_\_ Date \_\_\_\_\_

## **XII. ATTACHMENT G**

### **A. Bid Increments and Exponential Smoothing**

*Background.* The Auctions Automation System (“AAS”) calculates the minimum bid increment for each license with a standing high bid in each round of the auction based on all bidding activity for the license. For this auction, the Commission will use a standard exponential smoothing methodology to calculate minimum bid increments.

The AAS’ exponential smoothing formula calculates the bid increment based on a weighted average of activity received for each license in all previous rounds. This methodology allows the Commission to tailor each license’s bid increment based on its specific level of activity throughout the auction and provides a fairer means to determine license value.

*Calculation.* The calculation of the percentage bid increment for each license for the current round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2. (See example below.)

#### ***Equations***

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$
$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

where,

$A_i$  = activity index for the current round (round  $i$ )

$C$  = activity weight factor

$B_i$  = number of bids in the current round (round  $i$ )

$A_{i-1}$  = activity index from previous round (round  $i-1$ ),  $A_0$  is 0

$I_{i+1}$  = percentage bid increment for the next round (round  $i+1$ )

$N$  = minimum percentage increment or bid increment floor

$M$  = maximum percentage increment or bid increment ceiling

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable  $I_{i+1}$  from above times the high bid). This result will be rounded to the nearest thousand if the minimum acceptable bid is over ten thousand dollars or to the nearest hundred if it is under ten thousand dollars.<sup>82</sup>

#### **Examples**

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<sup>82</sup> Multiple increment bids are not rounded according to the previously stated rounding rule; they are received, displayed, and stored by the Automated Auction System as non-rounded dollar amounts resulting from the following formula: Amount Bid = High Bid + (Bid Multiplier \* Bid Increment).

License 1  
C=0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = \$1,000,000)

1. Calculation of percentage increment for round 2 using exponential smoothing:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

The smaller of  $I_2 = (1 + 1) * 0.1 = 0.2$  or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 2 using the percentage increment ( $I_2$  from above)

$$0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid for round 2 = \$1,200,000

Round 2 (3 new bids, high bid = \$2,000,000)

1. Calculation of percentage increment for round 3 using exponential smoothing:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

The smaller of  $I_3 = (1 + 2) * 0.1 = 0.3$  or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 3 using the percentage increment ( $I_3$  from above)

$$0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid for round 3 = \$2,400,000

Round 3 (1 new bid, high bid = \$2,400,000)

1. Calculation of percentage increment for round 4 using exponential smoothing:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

The smaller of  $I_4 = (1 + 1.5) * 0.1 = 0.25$  or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 4 using the percentage increment ( $I_4$  from above)

$$0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid for round 4 = \$2,880,000

For questions concerning bid increments, contact Craig Bomberger, Analyst, Auctions Operations Branch at (202) 418-0660.

### XIII. ATTACHMENT H

## ACCESSING THE FCC NETWORK TO FILE FCC FORM 175

This attachment describes how to access the FCC Network from a system that is running the Microsoft Windows 95 or Microsoft Windows 98 operating system. This involves configuring dial-up network access and then performing the dial-up procedure.

**Note:** Dial-up access to the FCC Network is *not* required to submit or review FCC Form 175 applications. You can perform those functions from the Internet, by pointing your web browser to either <https://wtbwww27.fcc.gov/> (primary location) or <https://wtbwww37.fcc.gov/> (secondary location). For more details, refer to the *Electronic Filing and Review of the FCC Form 175* attachment.

#### A. Conventions

The instructions in this section use the following typographical conventions:

**bold** Represents objects on the screen that you click with the mouse pointer, including buttons, Internet links, icons, tabs, menu items (e.g., **Cancel** button, **Auctions** link, **Save** option in the File menu).

*italic* Represents field names or areas of a screen (e.g., *Applicant* field, *Selected Licenses* area of a screen).

***bold italic*** Represents characters that you must type exactly as they appear in the instructions. For example, if you are instructed to type <https://wtbwww27.fcc.gov/>, you should type all of the characters shown in bold italic exactly as they are printed.

#### B. Accessing the FCC Network to Submit FCC Form 175 Applications

The following section provides the instructions for configuring the dial-up network access in preparation for submitting FCC Form 175 applications. The subsequent section gives the dial-up procedure.

##### 1. Configuring Dial-Up Networking

1. To start dial-up networking:
  - a. Click the Windows 95/98 **Start** button.
  - b. Click the **Programs** option to display the Programs menu.
  - c. Click the **Accessories** option to display the Accessories menu.
  - d. In Windows 95, click **Dial-Up Networking**.  
In Windows 98, click **Communications**, then **Dial-Up Networking**.

If **Dial-Up Networking** is not an option on your Accessories menu, you should install it from your Windows 95/98 CD or diskettes.

2. When the Dial-Up Networking window appears, double-click the **Make New Connection** icon.

The Make New Connection window appears.

3. Type **FCC Auctions 877#** in the field titled *Type a name for the computer you are dialing.*
4. In Windows 95, click the down arrow at the right of the *Select a modem* field and select your modem from the menu of available modems.

In Windows 98, click the down arrow at the right of the *Select a device* field and select your modem from the menu of available devices.

If your modem does not appear on this list, you must install your modem driver according to the modem manufacturer installation procedures, which are usually described in your modem's user manual.

5. Click the **Next** button.
6. Type **877** and **844-2788** in the *Area Code* and *Telephone Number* fields, respectively.

If you need to dial 9 or some other digit to get an outside line, include that digit in the *Area Code* field. For example, you might type **9, 1 877** in this field.

7. Verify that the correct country is selected in the *Country code* field.
- If necessary, click the down arrow at the right of the *Country code* field and select the appropriate country from the menu of available countries.

8. Click the **Next** button.
9. Click the **Finish** button.

An icon labeled **FCC Auctions 877#** appears in the Dial-Up Networking window.

10. Verify that properties are configured correctly before attempting a dial-up session. Put the mouse pointer on the icon and click the **right** mouse button to display a menu. Click **Properties** from the menu.
11. Click the **Configure** button. Click the **Options** tab at the top of the Properties window.
12. In the *Connection control* area of the Options tab, verify that *neither* option is selected. If either option is selected, click the check box at the left of the option to deselect it. Then click **OK**.

13. In Windows 95, click the **Server Type...** button.

In Windows 98, click the **Server Types** tab at the top of the Properties window.

14. In the *Advanced Options* area, verify that **only Enable software compression** is selected. If it is not selected, click the check box at the left of the option to select it. If either of the other options is selected, click the check box to deselect it.
15. In the *Allowed Network Protocols* area, **verify that only TCP/IP is selected**. If it is not selected, click the check box at the left of the option to select it. If either of the other options is selected, click the check box to deselect it.

16. Click the **TCP/IP Settings** button. On the TCP/IP Settings window, select *Server assigned IP addresses* at the top and select *Specify name server addresses* midway down the window.

17. Type **165.135.79.95** as the Primary DNS and **165.135.241.149** as the Secondary DNS. Ensure that these two options are checked:

- Use IP header compression
- Use default gateway or remote network

18. Click **OK** on the *TCP/IP Settings* window and the *Server Type* window.

19. Close the *Dial-Up Networking* window.

20. a. Click the Windows 95/98 **Start** button, then click the **Settings** option to display the *Settings* menu.
- b. Click **Control Panel** and then double-click the **Network** icon.
- c. Highlight the *TCP/IP Protocol* and click **Properties**. If there are multiple TCP/IP protocols, highlight *TCP/IP --> Dial-Up Adapter* and click **Properties**.

In a Windows 98 environment, a confirmation dialog appears. Read the information on the dialog, then click the **OK** button.

- d. Click the **DNS Configuration** tab and then click the **Enable DNS** radio button at the top.
- e. Type **bidder** in the *Host* box and type **fcc.gov** in the *Domain* box.

**Note:** You are limited to three DNS entries. If you already have three DNS entries, you must delete two of them before performing the next two steps. To do this, click the first entry you want to delete and click the **Remove** button. Then click the second entry you want to delete and click the **Remove** button again.

- f. Type **165.135.79.95** in the DNS Server Search Order box and click the **Add** button.
  - g. Type **165.135.241.149** in the DNS Server Search Order box and click **Add** again.
  - h. Click **OK** on the TCP/IP Properties windows, then click **OK** on the Network windows.

If you are prompted to restart your computer, click **Yes** to restart, then begin the Dial-Up Procedure.

## 2. **Dial-Up Procedure**

1. If the Dial-Up Networking window is not currently open, do the following:
  - a. Click the Windows 95/98 **Start** button.
  - b. Click the **Programs** option to display the Programs menu.
  - c. Click the **Accessories** option to display the Accessories menu.
  - d. In Windows 95, click **Dial-Up Networking**  
In Windows 98, click **Communications**, then **Dial-Up Networking**.

The Dial-Up Networking window appears.

2. In the Dial-Up Networking window, double-click the **FCC Auctions 877#** icon.
3. Click the **Connect** button on the window. *Do not enter User name or Password.*

The Connection window appears, indicating the status of your connection as your modem dials into the system. This window must remain running during your dial-up session. You may minimize the window, if you wish.

If your modem fails to establish a connection, please see the *Troubleshooting* section.

## C. **Submitting FCC Form 175 Applications**

After you have connected to the FCC Network, start your web browser and point it to either <https://wtbwww27.fcc.gov/> (primary location) or <https://wtbwww37.fcc.gov/> (secondary location) to obtain the Form 175 Homepage. For more details refer to the attachment titled *Electronic Filing and Review of the FCC Form 175*.

## D. **Removing the Dial-Up Networking Service**

Once you have finished using the dial-up networking service, you can remove it from your computer, as follows:

1. Click the Windows 95/98 **Start** button, then click the **Settings** option to display the Settings menu.

2. Click **Control Panel** and then double-click the **Network** icon.
3. Highlight the *TCP/IP Protocol* and click **Properties**. If there are multiple TCP/IP protocols, highlight *TCP/IP --> Dial-Up Adapter* and click **Properties**.

In a Windows 98 environment, a confirmation dialog appears. Read the information on the dialog, then click the **OK** button.

4. Click the **DNS Configuration** tab.
5. Click the DNS Server Search Order box containing **165.135.79.95** to select it, then click the **Remove** button.
6. Similarly, click the DNS Server Search Order box containing **165.135.241.149** to select it, then click the **Remove** button.
7. Click **OK** on the TCP/IP Properties windows, then click **OK** on the Network windows.
8. If you are prompted to restart your computer, click **Yes** to restart.
9. Remove the **FCC Auctions 877#** icon from your desktop. That is, click the icon with your *right* mouse button and then click the **Delete** option in the pull-down menu.

#### **E. Troubleshooting**

Following are solutions to problems you may encounter using Dial-Up Networking.

##### **1. Modem does not respond**

1. Confirm that all physical connections for the modem are present.
2. Confirm that the phone line is active by connecting it to a telephone and checking for a dial-tone.
3. Confirm that the correct modem driver is installed for your modem.

##### **2. Modem dials but does not connect**

1. Confirm that the number the modem is dialing is correct.
2. Confirm that the modem prefix, if any, is correct.

**Using a Backup Dial-In Number.** If the number and prefix are correct, the 877 number being dialed may be experiencing problems. In this case, you can reconfigure the dial-up software using an alternate dial-in number, which is also toll-free. To use the backup number, perform the *Configuring Dial-Up Networking* procedure again, but this time make the following changes:

- In Step 3, type **FCC Auctions 800#** in the field titled *Type a name for the computer you are dialing.*
- In Step 6, type **800** and **378-7435** in the *Area Code* and *Telephone Number* fields, respectively.
- In Step 17, type **165.135.241.149** as the Primary DNS.
- In Step 20f, type **165.135.241.149** in the DNS Server Search Order box.

**3. Modem dials and connects, but nothing appears when you enter the Location in the Web browser**

1. Verify the Dial-Up Networking settings specified in the *Configuring Dial-Up Networking* section.
2. Confirm that your Web browser is not using proxies:
  - a) On your browser, click the **Preferences** option in the Edit menu.
  - b) In the Category area at the left, double-click **Advanced**.
  - c) Click the Advanced structure's **Proxies** option.
  - d) Click the radio button labeled **Direct connection to the Internet**.
  - e) Click the **OK** button at the bottom of the window.

**4. Receive an Internal Server error in the Web browser**

1. Confirm that the *Location* is set to <https://wtbwww27.fcc.gov/> or <https://wtbwww37.fcc.gov/>
2. On your browser, click the **Preferences** option in the Edit menu. In the Category area at the left, double-click **Advanced**. In the area at the top, confirm that *Enable Java* and *Enable JavaScript* are selected. In the Cookies area, confirm that *Accept all cookies* is selected.

**F. Help**

For technical assistance with installing or using FCC software, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 7 a.m. to 10 p.m. ET, Saturday from 8 a.m. to 7 p.m. ET, and Sunday from 12 noon to 6 p.m. ET. **All calls to the FCC Technical Support Hotline are recorded.**

#### **XIV. ATTACHMENT I**

### **SUMMARY LISTING OF DOCUMENTS FROM THE COMMISSION AND THE WIRELESS TELECOMMUNICATIONS BUREAU ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULES**

All of the following documents can be found at FCC web site:

<http://www.fcc.gov/wtb/auctions/collusio/collusio.html>

#### **A. Commission Decisions:**

*Second Report and Order* in PP Docket No. 93-253, FCC 94-61, 9 FCC Rcd. 2348, 2386-2388 (1994), paragraphs 221-226.

*Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd. 5532, 5570-5571 (1994), paragraphs 91-92.

*Fourth Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-264, 9 FCC Rcd. 6858, 6866-6869 (1994), paragraphs 47-60.

*Second Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-215, 9 FCC Rcd. 7245, 7253-7255 (1994), paragraphs 48-55.

*Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-295, 9 FCC Rcd. 7684, 7687-7689 (1994), paragraphs 8-12.

In re Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd. 4277 (1995), In re Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd. 15,374 (1996).

In re Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd. 17,970 (1997) (petition for partial reconsideration pending).

Amendment of Part 1 of the Commission's rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 463-469 (1997), paragraphs 155-166.

In re Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); In the Matter of Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90 (May 7, 1999).

In re Application of Western PCS BTA I Corporation, *Notice of Apparent Liability for Forfeiture*, FCC 98-42 (March 16, 1998); In the Matter of Notice of Apparent Liability for Forfeiture of Western PCS BTA 1 Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78, ¶ 20 (rel. Dec. 13, 1999).

## **B. Wireless Telecommunications Bureau Decisions:**

Amendment of Parts 21 and 74 of the Commission's rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Order*, 11 FCC Rcd. 9655 (Wireless Tel. Bur. 1995).

In re Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, *Memorandum Opinion and Order*, 12 FCC Rcd. 6441 (Wireless Tel. Bur. 1997).

In re Applications of Mercury PCS II, LLC, For Facilities in the Broadband Personal Communications Services in the D, E, and F Blocks, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 18,093 (Wireless Tel. Bur. 1997).

In the Matter of Applications of High Plains Wireless, L.P., For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 12 FCC Rcd. 19,627 (Wireless Tel. Bur. 1997).

In the Matter of Applications of Mercury PCS II, LLC, For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 13 FCC Rcd. 5756 (Wireless Tel. Bur. 1997).

### **1. Public Notices:**

"Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd. 9645 (1995).

"FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS 'C' Block Reauction," *Public Notice*, 11 FCC Rcd. 7031 (1996).

"Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders," *Public Notice*, 11 FCC Rcd. 10,134 (1996).

"Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, DA 98-37 (rel. January 9, 1998).

### **2. Letters from the Office of General Counsel and the Wireless Telecommunications Bureau:**

*Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission* (released October 25, 1994).

*Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission* (released October 25, 1996).

*Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 1, 1994).

*Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division,*

*Wireless Telecommunications Bureau* (released December 14, 1994).

*Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95-2404* (released November 28, 1995).

*Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 10,895* (1996).

*Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 11,363* (1996).

*Letter to Elliott J. Greenwald from Christopher J. Wright, General Counsel, Federal Communications Commission* (released April 6, 1998).

*Letter to Robert Petit, Wiley Rein & Felding from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2905* (released December 26, 2000).

### **3. Civil Actions Initiated by U.S. Department of Justice:**

*U.S. v. Omnipoint Corp., Proposed Final Judgements and Competitive Impact Statements, Department of Justice, 63 FR 65,228* (November 25, 1998).

"Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release, U.S. Department of Justice* (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

### **4. Miscellaneous:**

Many of these documents can be retrieved from the following Commission web site:

<http://www.fcc.gov/wtb/auctions/collusio/collusio.html>

These documents may be located by using our search engine (select the link "search"). All of these documents can be ordered in hard copy for a fee from the Commission's contractor, International Transcription Service, Inc. at (202) 314-3070.

Documents retrieved from the FCC web site are available in various formats. In order to review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.